

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

TYRONE ALEXANDER, et al. PLAINTIFFS

V. CIVIL ACTION NO. 3:01CV139-B-A

TIPPAH COUNTY, MISSISSIPPI, et al. DEFENDANTS

MEMORANDUM OPINION

This cause comes before the court upon the defendants' motion for summary judgment. Upon due consideration of the motion, the response thereto, and the parties' memoranda and exhibits, the court is ready to rule.

Facts

On February 6, 2001, the Mississippi Department of Corrections transported the plaintiffs, Tyrone Alexander and Kevin Carroll, from the state penitentiary at Parchman to the Tippah County Detention Facility for an upcoming court appearance in Tippah County Circuit Court. Upon arrival the plaintiffs were provided with the facility's policies and procedures handbook and were given an explanation of the facility's rules and the punishment for violations of those rules. The punishment for a number of infractions includes twenty-four-hour administrative segregation.

The Tippah County jail was a new facility. Its grand opening had been held approximately three weeks prior to the plaintiffs' visit. Before the new jail was opened, Tippah County Sheriff James Page and Jail Administrator Paul Gowdy toured similar facilities and developed the jail's policies and procedures from example policies used by these other facilities.

Shortly before 7:00 a.m. on February 7, 2001, the plaintiffs engaged in a physical altercation with Gowdy and guards Jody Clark and Billy Johnson. The plaintiffs had taken a shower and requested clean boxer shorts from their bag. Gowdy refused the request, and the plaintiffs became belligerent. Each plaintiff asserts that he acted as the "peacemaker" during the altercation, but Gowdy

testified that both plaintiffs were confrontational and both participated in the fight that ensued. As a result of the altercation, the plaintiffs were charged with three counts of simple assault of a law enforcement officer. The plaintiffs explicitly state in their complaint that their claims do not arise from this initial altercation.

After handcuffing the plaintiffs, Gowdy and the guards placed the plaintiffs in administrative segregation in an isolation cell. The isolation cell is ventilated and has temperature controls which are monitored in the central control room. The cell has no sheets, mattresses, or any other objects which could be used by inmates to assault guards entering the room. Inmates under administrative segregation are deprived of as many tools as possible that could be used to create a dangerous situation. Meals are served in styrofoam boxes with plastic utensils. The cell contains no toilet except for a "Turkish drain" in the floor which can be flushed from outside the cell. If inmates need to relieve themselves while in the cell, a five-gallon bucket and toilet paper are passed to them upon request.

Pursuant to policy, the plaintiffs served a period of twenty-four hours of administrative segregation clothed only in their boxer shorts. They were the first inmates formally assigned to the isolation cell in the new facility and only the second inmates ever housed in this cell. The cell was clean and dry when the plaintiffs were placed there.

Later the same morning, the plaintiffs were taken from the isolation cell, dressed in orange jumpsuits, handcuffed in front of their bodies, and transported within the same building to the Tippah County Justice Court for arraignment on the three counts of assault upon a law enforcement officer. Alexander was belligerent during the trip to the courtroom. This demeanor continued in the courtroom. As the judge was speaking to Carroll, Alexander interrupted numerous times and attempted to argue his case to the judge while approaching the bench. Sheriff Page and two deputies instructed Alexander to remain quiet and to step back from the bench. When Alexander continued to disobey these verbal commands, Chief Deputy Garry Welch placed one hand upon Alexander's shoulder and one gloved hand over his mouth and whispered that he must settle down and move back. Alexander physically reacted to this contact, turned to the persons sitting in the court gallery, shouted for them to take note of

the deputy's actions, and was ultimately led out of the courtroom. Alexander alleges that he was shoved, that his body hit a wall because his legs were shackled, and that he suffered a "knot" on his head. He alleges that the sheriff punched him in the throat area. Joe Davis, a law partner of plaintiffs' counsel, was present in the courtroom and stated in an affidavit that he saw the sheriff punch Alexander in the stomach. The plaintiffs' complaint states that Alexander was punched in the upper torso area. Sheriff Page denies punching Alexander. Deputy Welch's testimony corroborates the sheriff's testimony. Alexander was charged with disorderly conduct for his behavior in the courtroom.

After the courtroom altercation, the plaintiffs were returned to the isolation cell to serve the remainder of the twenty-four-hour period in administrative segregation. The plaintiffs complain of the conditions during their isolation. They allege that they were not provided with utensils during their meals. Further, they allege that they were not provided with a five-gallon bucket for relieving themselves but were forced to use the floor drain, which became clogged. Carroll asserts that he was provided with only one sheet of toilet paper. The plaintiffs contend that the defendants ordered a trusty to clean the clogged drain by inserting a water hose through a hole in the door and squeegeeing water across the grate. The plaintiffs assert that this action caused the "foulness" to splatter throughout the cell – foulness in which they were required to walk barefooted. Carroll allegedly became nauseated from the stench in the cell and vomited into the drain. The plaintiffs also complain of the cold temperatures in the isolation cell.

The defendants contend that the plaintiffs were provided utensils with which to eat and that the plaintiffs used those utensils and the paper plates to clog the drain. Page and Gowdy assert that they personally unclogged the drain before the plaintiffs were removed from the isolation cell.

The defendants assert that inmate grievance forms are available to all inmates on a daily basis. The facility's policy and procedure manual outlines a grievance procedure. Gowdy provided the plaintiffs with copies of this manual, and the plaintiffs testified that they read it. The plaintiffs, however, allege that they asked for grievance forms but were told that the facility was currently without any forms. Carroll, however, submitted a letter complaint regarding his boxer shorts and other personal items.

Upon being informed that the facility had no grievance forms, Alexander stated that he knew how to compose and submit a grievance without a form. Alexander testified that he began a grievance letter but could not recall whether he submitted it to the staff. Both plaintiffs wrote letters to the administrative staff apologizing for their misconduct.

The plaintiffs brought this action seeking redress for their grievances under the Eighth Amendment to the United States Constitution and 42 U.S.C. § 1983. Specifically, the plaintiffs assert claims for allegedly being subjected to unconstitutional conditions of confinement. Alexander further brings a claim for excessive use of force in violation of the Eighth Amendment. The plaintiffs seek monetary damages, punitive damages, and declaratory and injunctive relief.

Standard of Review

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden then shifts to the non-movant to "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 106 S. Ct. at 2553, 91 L. Ed. 2d at 274. Before finding that no genuine issue for trial exists, the court must first be satisfied that no rational trier of fact could find for the non-movant. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986).

Analysis

Failure to Exhaust Administrative Remedies

The defendants argue that the present action must be dismissed pursuant to the Prison Litigation

Reform Act because the plaintiffs did not exhaust the administrative remedies available to them. The plaintiffs respond that they attempted to exhaust these remedies by requesting grievance forms which were not provided to them. They further argue that the available administrative remedies were inadequate because the persons with whom they held grievances would have been the same persons reviewing the grievance forms.

The Tippah County Detention Facility Inmate Handbook provides as follows:

IV. Grievances

Inmate complaints should be directed to a Detention officer. If that doesn't provide satisfactory results, a formal grievance can be filed. The formal grievance must be filed within three (3) days of the incident that caused the grievance.

The defendants' expert, David Lee Salmon, Ph.D., an instructor certified by the Mississippi Board of Law Enforcement Officer Standards and Training and an advisor to the Mississippi Department of Public Safety, stated that the facility's "policy regarding Inmate Grievances [is] quite adequate, affording inmates due process."

The Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a), states that "[n]o action shall be brought with respect to prison conditions under Section 1983 of this title . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." In Porter v. Nussle, 534 U.S. 516, 122 S. Ct. 983, 984, 152 L. Ed. 2d 12 (2002), the Supreme Court held that "the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." The plaintiffs argue that Porter should not be applied to the case at bar because the ruling in Porter came down after the events giving rise to this case. This court finds no merit to the plaintiff's argument against retroactive application, however, for two reasons. First, the statute which the Supreme Court interpreted in Porter pre-existed the events subject to this lawsuit and is, therefore, not a new principle of law. Second, the Fifth Circuit has already applied Porter

retroactively. See Clifford v. Gibbs, 298 F.3d 328 (5th Cir. 2002).

Applying Porter as well as Fifth Circuit precedent to the case at bar, the court finds no merit to the plaintiffs' argument regarding the inadequacy of administrative remedies. In Wright v. Hollingsworth, 260 F.3d 357 (5th Cir. 2001), the Fifth Circuit stated, "Here, we hold only that Congress has provided in § 1997e(a) that an inmate must exhaust irrespective of the forms of relief sought and offered through administrative sources." Wright, 260 F.3d at 358 (quoting Booth v. Churner, 121 S. Ct. 1819, 1825, n. 6 (2001)). The court further stated as follows:

Nothing in the Prison Litigation Reform Act . . . prescribes appropriate grievance procedures or enables judges, by creative interpretation of the exhaustion doctrine, to prescribe or oversee prison grievance systems The PLRA required [the plaintiff] to exhaust 'available' 'remedies,' whatever they may be. His failure to do so prevents him from pursuing a federal lawsuit at this time.

Id. at 358. Thus, while it may seem inherently meaningless to complain to a sheriff or jail administrator about his or her own behavior, the current case law requires this court to dismiss the plaintiffs' claims for failing to do so. According to the Fifth Circuit, "the current version [of § 1997e(a)] provides no . . . discretion – exhaustion is mandatory." Clifford, 298 F.3d at 332.

Further, the court is unpersuaded by plaintiffs' contentions that they attempted to exhaust the administrative remedies. The plaintiffs are seasoned inmates well-experienced in the correctional system and have testified to their knowledge of administrative procedures. The plaintiffs allege that they were denied the grievance forms they requested, but they, nevertheless, wrote a number of letters to Page and Gowdy regarding personal items and apologies. Yet, they did not include in their grievance letters complaints regarding the conditions in the isolation cell; nor did Alexander complain of any excessive use of force.

Applying the clear language of the PLRA to the case at bar, the court finds that Alexander's claim for excessive use of force should be dismissed without prejudice. The court further finds, as discussed below, that summary judgment should be granted as to all other claims and that those claims should be dismissed with prejudice.

Conditions of Confinement

The plaintiffs allege that they were subjected to unconstitutional conditions of confinement during their twenty-four-hour stay in the isolation cell. They assert that their alleged exposure to cold temperatures, the clogged Turkish drain, and feces and urine on the floor of the cell amount to "base, inhuman, and barbaric" treatment in violation of the Eighth Amendment.

The court finds a number of disputed issues of fact regarding the conditions of confinement. For instance, the defendants deny the plaintiffs' assertions that the plaintiffs were not provided with eating utensils. Defendants Page and Gowdy assert that they personally unclogged the drain and cleaned the cell while the plaintiffs were still serving their twenty-four hours of administrative segregation. The plaintiffs contend that a trusty merely turned a water hose on the grate through a slot in the door. Further, the defendants assert that the temperature of the cell was regulated and kept at an appropriate temperature, while the plaintiffs insist that the cell was uncomfortably cold. Clearly, there are contested issues of fact in this case. The important question, however, is whether those issues of fact are material. The court finds that they are not.

A conditions-of-confinement claim, like other Eighth Amendment claims, must satisfy both objective and subjective tests. Davis v. Scott, 157 F.3d 1003, 1006 (5th Cir. 1998). For the objective component, "extreme deprivations are required to make out a conditions-of-confinement claim." Davis, 157 F.3d at 1006 (quoting Hudson v. McMillan, 503 U.S. 1, 112 S. Ct. 995, 1000, 117 L. Ed. 2d 156 (1992)). In Davis, the Fifth Circuit upheld the lower court's dismissal of a conditions-of-confinement claim where the prisoner had been made to spend three days in a cell with blood on the walls and excretion on the floor. The Davis court cited with approval Smith v. Copeland, 87 F.3d 265, 269 (8th Cir. 1996), in which the Eighth Circuit found no Eighth Amendment violation where a prisoner was exposed for four days to raw sewage from an overflowed toilet in his cell. The court further compared the facts of Davis to Shakka v. Smith, 71 F.3d 162, 167-68 (4th Cir. 1995), where the Fourth Circuit found no Eighth Amendment injury when a prisoner was given cleaning supplies but denied a shower for three days after human excrement had been thrown on him.

The Supreme Court has stated that "the length of confinement cannot be ignored A filthy, overcrowded cell . . . might be tolerable for a few days and intolerably cruel for weeks or months." Hutto v. Finney, 437 U.S. 678, 686-87, 98 S. Ct. 2565, 2571, 57 L. Ed. 2d 522 (1978). As noted by the Fifth Circuit, the plaintiff in Davis was confined in the subject cell for only three days. The plaintiffs in the case at bar were only confined for twenty-four hours. The plaintiffs cite Palmer v. Johnson, 193 F.3d 346, 352 (5th Cir. 1999), for the proposition that the twenty-four-hour period in which they were confined is sufficient for a constitutional violation. In Palmer, the alleged violations took place over a seventeen hour period. The plaintiffs fail to note, however, that the Palmer plaintiff was confined *outdoors* with *forty-eight* other prisoners. Palmer, 193 F.3d at 352. Palmer is, therefore, clearly distinguishable from the case at bar.

In light of Fifth Circuit precedent and considering the totality of the circumstances while accepting the plaintiffs' contentions of fact as true, this court finds that the conditions of the plaintiffs' confinement do not rise to the level required for unconstitutional confinement in violation of the Eighth Amendment. The court need not reach the subjective component because the plaintiffs' claims do not objectively demonstrate a sufficiently extreme deprivation. See Davis, 157 F.3d at 1006.

Further, the record reveals no physical injury suffered due to the alleged confinement conditions with the exception of Carroll's alleged nausea during administrative segregation. According to the PLRA, "No federal civil action may be brought by a prisoner . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). The court finds that the plaintiffs have failed to meet this requirement.

Declaratory and Injunctive Relief

The court's ruling renders moot the plaintiffs' requests for declaratory and injunctive relief.

Conclusion

For the forgoing reasons, the court finds that the defendants' motion for summary judgment should be granted as to all claims except Alexander's claim of excessive use of force. The court further finds that Alexander's claim of excessive use of force should be dismissed without prejudice pursuant to

the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), for the plaintiff's failure to exhaust administrative remedies.

An order in accord with this opinion shall issue this day.

This, the _____ day of October, 2002.

NEAL B. BIGGERS, JR.
SENIOR U.S. DISTRICT JUDGE

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ORDER

Pursuant to the memorandum opinion issued contemporaneously herewith, it is hereby
ORDERED:

That all of plaintiffs' claims are **DISMISSED with prejudice** with the exception of Plaintiff Alexander's claim for excessive use of force, and

That Plaintiff Alexander's claim for excessive use of force is **DISMISSED without prejudice** pursuant to 42 U.S.C. § 1997e(a).

NEAL B. BIGGERS, JR.
SENIOR U.S. DISTRICT JUDGE